

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture (Department) determined that an emergency exists; weedy rice has been identified in California rice growing regions. The Department is proposing a readoption of emergency regulations to amend the Rice Identity Preservation regulation (Code of California Regulations, Title 3, Division 4, Chapter 2, Subchapter 5), to address the prevention and eradication of weedy rice while undergoing and completing the regular rulemaking process.

An “emergency” is a situation that calls for immediate action to avoid serious harm to the public peace, health, safety or general welfare. (Government Code, Section 11342.545.) A regulation may be adopted as an emergency regulation, if a state agency makes a finding that the adoption of a regulation is necessary to address an emergency. (Government Code, Section 11346.1(b)(1)) and a regulation may be readopted as an emergency regulation, if the state agency shows due diligence towards completing the regular rulemaking process pursuant to Government Code section 11346.1(h).

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

In this document the Department is providing necessary and specific facts demonstrating the existence of an emergency and the need for immediate action to prevent serious harm to the general welfare of California citizens, pursuant to Government Code, Section 11346.1(b)(2). The Department has complied with the requirement to provide notice of the emergency regulation pursuant to Government Code, Section 11346.1(a)(2).

The purpose of the readoption of the emergency regulations is to first, continue to prevent the further infestation of weedy rice, one of the most harmful weeds impacting California’s rice industry and which continues to harm California’s rice industry. For comparison purposes, Arkansas, another rice producing state, chose not to address the presence of weedy rice in their state and as a result, weedy rice has infested 62% of its rice growing acreage, causing significant yield

reductions. The second purpose for this readoption of emergency regulations is to allow additional time to complete the regular rulemaking process as shown by completed 45-day notice completion and submission of the Certificate of Compliance to the Office of Administrative Law on September 6, 2017.

In California, it has been confirmed by the California Rice Certification Committee (Certification Committee) that weedy rice has rapidly spread to every rice producing county since it was first discovered in 2006 in a 156 acre rice field, and now is infesting at least 10,000 acres.

Weedy rice can spread by planting uninspected seed which may occur with individual producers planting rice they have produced and with producers selling their uninspected seed to other producers. Because of the significant harm this practice can cause, it must be immediately addressed as provided in Section 2852.5(a)(2)(A).

This is the beginning of the process of eradicating weedy rice. If not addressed as provided in Section 2852.5(a)(2)(A), there will be a one year delay in startup, which will allow the infestation to continue to spread.

Farming decisions involving the use and sale of farm saved seed are typically made in the winter months for rice planting which occurs in April and May of each year. Since farm saved seed is often the source of weedy rice contamination, it is essential that producers who are considering the use of such seed be immediately notified that this practice is no longer allowed. Readoption of these emergency regulations will also allow such producers adequate time to modify their farming decisions and practices.

The single most effective tool in the eradication of weedy rice is planting uncontaminated seed. The emergency regulations implement this tool by requiring rice producers to plant certified seed or seed that has been reviewed under a third party assurance program. The process to certify seed requires two crop years to allow for inspections and to meet fallowing requirements.

Contaminated seed will continue to pose a threat for another three years if the emergency regulations are not readopted for this crop year. The longer contaminated seed is planted, the longer weedy rice will continue to spread and the population of weedy rice seed will buildup and uncontrollably affect California rice fields.

The Secretary is proposing to amend the Rice Identity Preservation regulation pursuant to the authority in Food and Agricultural Code (FAC), Section 403, "The Department shall prevent the introduction and spread of injurious insect or animal

pests, plant diseases, and noxious weeds;" FAC, Section 401.5 "The Department shall also seek to enhance, protect, and perpetuate the ability of the private sector to produce food and fiber in a way that benefits the general welfare and economy of the state;" FAC, Section 407, "The director may adopt such regulations as are reasonably necessary to carry out the provisions of this code which he is directed or authorized to administer or enforce;" FAC, Section 55047, "The committee shall recommend to the secretary that regulations be adopted, amended, or repealed by the secretary to accomplish all of the following purposes: (a) Maintain the integrity and prevent the contamination of rice which has not been identified pursuant to subdivision (a) of Section 55040; (b) Prevent the introduction of diseases, weeds, or other pests..." and FAC, Section 55022, "Upon receipt of a recommendation from the committee for the promulgation, amendment, or repeal of regulations, the Secretary shall within 30 working days do one of the following: (1) Initiate the rulemaking process with the regulation as recommended by the committee..."

California Environmental Quality Act

The emergency regulations do not impact the environment and are therefore not subject to the California Environmental Quality Act (CEQA). All requirements in the emergency regulations are directly associated with commonly accepted farming practices including cleaning of equipment and the inspection of rice seed to prevent contamination, and therefore do not qualify as a project specified in CEQA (Section 21065). Incorporate by reference letters and background information from OAL File # Z-2017-0303-0.

The following is provided for background purposes.

Weedy rice has the potential to cause significant irreparable harm to California's rice industry. The Department's compliance with the California Administrative Procedure Act and CEQA are separate actions, and are not interrelated in this case. Adoption of this specific regulatory authority is not the beginning of a project that would otherwise be covered by CEQA. These emergency regulations, for the reasons already set forth, constitutes a specific act necessary to prevent or mitigate an emergency as authorized by Public Resources Code Section 21080, subdivision (b) (4) and Title 14, California Code of Regulations Section 15269, subdivision (c). The regulation is also an action required for the preservation of the environment and natural resources as authorized by Title 14, California Code of Regulations, Sections 15307 and 15308.

Background

Weedy rice is one of, if not the, most harmful weed impacting rice growing regions throughout the world.

Weedy rice has a vigorous growth that makes it a competitor for space and resources, and when present in cultivated rice fields, rice yields will unavoidably be reduced. In addition, weedy rice has an abnormal reproductive cycle in which seed production (heading) may occur over a prolonged period of time producing seeds that disperse (shatter) easily at maturity. A single weedy rice plant left in a field can result in several hundred plants the next year, and thousands of plants the year after. Weedy rice seed that falls to the ground but does not germinate within the first two years, can remain dormant for up to ten years and still be a threat to infest rice fields. This dormancy leads to challenges in developing an effective management strategy.

Weedy rice is also a cause of concern at rice mills. The presence of weedy rice can lower the grade of milled rice. Removing the weedy rice seeds at the mill may be done by using optical sorters and additional milling, which increase the cost to the miller and result in a reduced price for the producer.

In Arkansas, a 2008 survey showed that 62% of fields are infested with weedy rice¹. In the Southern United States, high infestation of weedy rice has resulted in yield reductions over 60%. These rice growing regions manage the infestation through herbicide resistant rice varieties and rotation with herbicide resistant crops. However, such control measures are not available in California because weedy rice is the same species as the cultivated rice grown in the state (*Oryzae sativa*). This also makes it difficult for producers to detect weedy rice because its features are similar to that of cultivated rice.

In the summer and fall of 2016, five strains of weedy rice were identified in rice fields throughout all rice growing counties. Knowing the severity of weedy rice, the California rice industry took immediate action and drafted emergency regulations that addressed management practices. These draft regulations were presented to the Certification Committee on October 26, 2016, but were not approved due to the need for additional input and analysis.

The draft regulations were reviewed and revised, and on November 30, 2016, were resubmitted to the Certification Committee, which includes in part representatives from the California Crop Improvement Association, California Warehouse Association, California Cooperative Rice Research Foundation, and

the University of California. During this meeting, the regulations underwent an extensive review and were approved with a unanimous vote.

¹ “Red Rice (*Oryza sativa*) Emergence Characteristics and Influence on Rice Yield at Different Planting Dates,” *Weed Science* 57, January-February 2009.

On January 10, 2017, the California Rice Commission (Commission) submitted an emergency regulatory package to the Department. On January 12, 2017, the Department followed up requesting additional documentation. Between January 12, 2017 and February 10, 2017, the Commission worked closely with the Department to develop a complete emergency regulatory package, which was officially submitted to the Department on February 14, 2017. The initial emergency regulations were approved on March 13, 2017. Following the diligent completion of the regular rulemaking process, the Certificate of Compliance was submitted September 6, 2017 to the Office of Administrative Law. Following official review, the Certificate of Compliance was in need of additional clarification of necessity within the initial statement of reasons, as required by Government Code 11346.2(b)(1) and Title 1 California Code of Regulations Section 10. The Department is submitting the readoption of the emergency regulations while we complete the additional clarification of the regular rulemaking file and continue to diligently complete the regular rulemaking process in the necessary time.

California is one of the top rice producing states in the country and the leading medium grain rice producer in the world. A 2010 report by Texas A&M University, concluded that the California rice industry directly contributes \$910.85 million to California's economy, and indirectly contributes \$322.07 million. That same report found that the California rice industry provides 7,772 direct jobs, and 1,381 indirect jobs.

Weedy rice has the potential to devastate the California rice industry and seriously impact this economic activity. Accordingly, it is necessary to amend this regulation to add provisions for the prevention and eradication of weedy rice.

Relied Upon Documents

The Department has relied upon the following information:

1. "Red Rice Pictures," California Rice Research Board,
<http://www.carrb.com/Facts/RedRice.html>
2. "Weedy Red Rice Update," California Crop Improvement Association,
<http://rice.ucanr.edu/files/229841.pdf>
3. "Buried Red Rice Seed," Journal of the American Society of Agronomy (July 1939)

4. "Red Rice (*Oryza Sativa*) Emergence Characteristics and Influence on Rice Yield at Different Planting Dates," Weed Science 57 (January-February 2009)
5. "Weedy (Red) Rice: An Emerging Constraint to Global Rice Production," Advances in Agronomy, First Edition (2015)
6. "Clearfield Rice: Its Development, Success and Key Challenges on a Global Perspective," Crop Protection 49 (2013)
7. "Economic Contributions of the US Rice Industry To the US Economy," Texas A&M, Agricultural and Food Policy (2010)

Authority and Reference Citations

Authority:

Sections 401.5, 403, 407, 55022 and 55047, FAC
Section 11400.20, Government Code

Reference:

Sections 55022, 55040, 55046, 55047, 55107(b), and 71131, FAC
Section 11400.20, 11425.50, 11440.30 and 11445.20, Government Code

Informative Digest

Existing Law

FAC, Section 403, provides that the Department shall prevent the introduction and spread of insect or animal pests, plant diseases, and noxious weeds. FAC, Section 407, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code which she is directed or authorized to administer or enforce.

The California Rice Certification Act of 2000 (Act), commencing with FAC, Section 5500 et al., was established to protect and maintain the high quality of rice produced, processed or handled in this state. The Act permits the industry to establish terms and conditions for the production, processing and handling of rice, in order to achieve the goal of preventing potential commingling of various types of rice, and to prevent commingling where reconditioning is infeasible or impossible.

Pursuant to the Act, a committee, nominated by the California Commission and appointed by the Secretary, shall identify rice that have characteristics of commercial impact and recommend to the Secretary protocol for planting, producing, processing or handling the identified rice. (FAC, Sections 55020 and 55040)

The committee shall recommend to the Secretary that regulations be adopted, amended or repealed to accomplish the purposes of the Act, including, but not limited to: maintaining the integrity and prevent the contamination of rice; prevent the introduction of diseases, weeds or other pests; ensure enforcement of terms and conditions imposed on planting, processing or handling of rice; and encourage research and development of new types of rice. (FAC, Section 55047)

Upon the receipt of recommendation from the committee for the promulgation, amendment, or repeal of regulations, the Secretary shall within 30 working days do one of following: (1) initiate the rulemaking process with the regulation as recommended; (2) decline to initiate the rulemaking process; or (3) request that the committee provide additional information regarding the recommended regulations. (FAC, Section 55022)

The Secretary of Agriculture initiated the rulemaking process of the Rice Identity Preservation regulations beginning May 19th and ending the 45-day comment period July 3, 2017, meeting the required 30 day action and showing the department's due diligence in meeting the required regulatory timelines.

Following official review, the certificate of compliance was in need of necessity within the official statement of reasons as required by Government Code 11346.2(b)(1) and Title 1 California Code of Regulations Section 10. The Department is submitting the first readoption of the emergency regulations while we complete the additional clarification of the regular rulemaking file.

In 2004, the committee recommended and the Secretary initiated a rulemaking process that created the Rice Identity Preservation regulation, Title 3 California Code of Regulations, Division 4, Chapter 2, Subchapter 5, Section 2850 et al. This regulation established protocol for the production and handling of specified rice varieties, which preserved California rice integrity and high quality. (3 Code of Regulations, Division 4, Chapter 2, Subchapter 5, Section 2851.

Emergency Regulations

In accordance with the California Rice Certification Act, the Certification

Committee determined weedy rice will have an adverse commercial impact on the California rice industry, and recommended to the Secretary these emergency regulations to prevent and eradicate weedy rice. Upon the finding of an emergency, the Secretary initiated this emergency rulemaking process.

The emergency regulations amend the following sections of the Rice Identity Preservation regulation:

Section 2852.5, Prevention and Eradication of Weedy Rice

Section 2852.5 is added to establish protocol for the prevention and eradication of weedy rice. The new section mandates inspection of planting and harvesting equipment used in another rice producing state and brought into California; prohibits the selling of farm saved seed to other producers; requires producers to plant farm saved seed solely for the purpose of rice to be milled or processed; requires producers to only use seed that has been enrolled in a certification program by a member of an Association of Official Seed Certifying Agency or is subject to a third party quality assurance program; and requires verification of planting certified seed or seed enrolled in a quality assurance program approved by the Certification Committee.

Section 2850, Terms and Definitions

Deletes subheading (f) “Basic Seed”, and adds “Basic Seed” to subheading (e).

It also adds subheadings (f) through (n), to include definitions for language used in Section 2852.5.

The emergency regulations also make minor amendments to clarify and clean-up the regulatory language; specifically to sections 2850, 2851, 2852, 2853, 2854, 2855 and 2856.

Anticipated Benefits From This Regulatory Action

Adoption of the emergency regulations will have an immediate benefit to the rice industry. The regulations establish protocol for rice producers and handlers to prevent the spread of weedy rice, which are immediate but also cognitive to the sensitivities of the rice industry.

The first protocol will ensure that weedy rice is not incidentally transmitted into California through rice production equipment. (Section 2852.5(a)(1))

The second protocol prevents the spread of weedy rice by prohibiting the sale of farm saved seed (Section 2852.5(a)(2)(a)), but allows the producers that have farm saved seed through December 31, 2018. (Section 2582.5(a)(2)(b)) This flexibility will off-set production costs for producers with excess seed.

The second protocol further protects the industry from the spread of weedy rice, by ensuring the quality of seed purchased has been certified. Through December 31, 2018, producers planting new seed may use certified seed or seed from a third-party quality assurance program approved by the Certification Committee or seed from a program approved by the Certification Committee. Beginning January 1, 2019, producers may only use seed that has been enrolled in a certification program by a member of an Association of Official Seed Certifying Agency or is subject to a third-party quality assurance program approved by the Certification Committee. (Sections 2852.2(a)(2)(c)-(d)) The implementation of these protocols provides time for producers to use excess seed and not incur unanticipated costs.

Lastly, the third protocol creates an additional safety measure to protect the industry from the spread of weedy rice, by requiring producers to provide verification of planting certified seed or seed enrolled in a quality assurance program approved by the Certification Committee. (Section 2852.2(a)(3)(a)). This is also critical to the rice industry which will be implemented August 1, 2019.

Determination of Inconsistency or Incompatibility with Existing State Regulations:

The Department has determined the emergency regulations are not inconsistent or incompatible with existing state regulations.

Mandate on Local Agencies or School Districts

The Department has determined that Government Code, Section 2852.2, does not impose a mandate on local agencies or school districts, except that county agricultural commissioners must inspect rice production equipment that has been used in another rice producing state and brought into California. The Department confirmed that the county agricultural commissioners will not incur a cost for conducting the inspections.

Fiscal Impact:

The Department has determined that the emergency regulations do not impose any additional costs or savings requiring reimbursement under Government Code, Section 17500 et al., any non-discretionary cost or savings to local agencies or school districts, or any cost or savings in federal funding to the state. The Department has determined there will be no cost or savings to any state agency pursuant to Government Code, Section 11346.1(b) or 11346.5(a)(6).

Economic Impact

The Department has made a determination that the emergency regulations would not affect the creation or elimination of jobs, the creation of a new business, the elimination of existing businesses, or the expansion of businesses currently doing business within the state.

The Department has determined that the following expenses may be incurred for reasonable compliance with the proposed action:

(1) Rice producers who sell farm saved seed may incur a minimal cost. There are about 2,500 rice producers in California and approximately 20% (500 producers) have farm saved seed. The majority of these producers did not grow the farm saved seed with intent to sell the seed for income, so the cost incurred is insignificant.

(2) Producers that intended to use farm saved seed will incur an additional cost, however, this too is minimal.

Certified seed or seed from a quality assurance program, costs \$15 per hundred pounds more than farm saved seed. 170 pounds of seed is applied per acre. The additional cost is \$25.50 per acre. The average rice producer has 350 acres, therefore the cost on a rice producer who intended to use farm saved seed is approximately \$8,925.

The cost to the industry is insignificant. The industry farm gate value in 2015 was \$752 million (CDFA's 2015-2016 Agricultural Statistics Review). The anticipated

industry increase is less than one percent (0.37%) than that farm gate value. The total cost to the industry is approximately \$2,805,000.

(3) Negligible costs will be incurred by seed producers who wish to become certified seed sellers. Pursuant to the California Seed Law (FAC, Section 52351) the Department requires certified seed producers to pay an annual registration fee, \$40, and an assessment of \$0.30 per \$100 gross sales (FAC, Section 52354).

(4) The California Rice Commission is responsible for enforcing the emergency regulations. Based upon the Department's review of cost associated with enforcing the Rice Identity Preservation regulation, the Department has determined that no additional costs will be incurred by the Commission for the enforcement of the emergency regulations.